



UNITED STATES
TELEPHONE
ASSOCIATION

April 7, 1999

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APR 07 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W., TW-A325
Washington, D.C. 20554

Re: Notice of Written Ex Parte Presentation
CC Docket No. 96-45
Denial of Petition for Reconsideration of Fourth Reconsideration Order

Dear Ms. Salas:

The United States Telephone Association ("USTA") urges the Commission to deny the pending petition for reconsideration of the Fourth Reconsideration Order in the above-captioned universal service docket (the "Washington petition") filed by the Washington State Department of Information Services ("Washington DIS") and others on February 12, 1998.^{1/} USTA has opposed the Washington petition and has made several *ex parte* presentations to the Commission in opposition, including a written presentation on February 26, 1999.^{2/}

USTA writes to emphasize that there is no basis for treating Washington DIS as enhancing access to advanced services under either section 706 of the Communications Act, or sections 254(c)(3) or 254(h)(2) of the Act, especially in light of the Commission's recent report to Congress on the deployment of advanced telecommunication capability, released on February 2, 1999 (the "Advanced Capability Report").^{3/} In that report, the Commission stated:

Although the Education and Library Networks Coalition argues that the universal service support mechanisms are not sufficient to implement section 706, we believe that it would be

^{1/} The Washington petition was filed by Washington DIS, the Washington State Library, the Office of the Superintendent of Public Instruction, North Thurston County School District No. 3, Yakima Valley Regional Library, and Educational Service District No. 112. USTA opposed the Washington petition on March 25, 1998. See USTA opposition to petitions for reconsideration, CC Docket No. 96-45 (filed Mar. 25, 1998) at 5.

^{2/} See Letter to Magalie Roman Salas, Secretary, FCC, from Porter Childers, USTA, re Written Ex Parte Presentation, CC Docket No. 96-45 (filed Feb. 26, 1999) (the "February 26 letter").

^{3/} See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Manner, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, Report, FCC 99-5 (rel. Feb. 2, 1999).

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premature at this time to adopt additional measures for deploying advanced services to schools and classrooms. We expect that, as implementation of the universal service support mechanisms continues, deployment of advanced telecommunications capabilities to schools and libraries will become widespread. Finally, we note that in the *Universal Service Order*, as recommended by the Joint Board, the Commission committed to review the definition of universal service on or before January 1, 2001. We believe it would be appropriate at that time to assess whether the implementation of the universal service support mechanisms has resulted in the deployment of advanced services to schools and classrooms.^{4/}

This sound reasoning applies directly to the Washington petition. The Commission should deny the petition, since, as the Commission told Congress, "it would be premature" to take additional steps for providing advanced services to schools and libraries.

Indeed, USTA schools and libraries would not receive additional "advanced services" even if the Commission were to grant the Washington petition, which it should not do. As USTA explained in its February 26 letter, the so-called "value added" services described in the Washington petition cannot be considered as "advanced," or as enhancing access to such services, for purposes of sections 254(c)(3) or 254(h)(2).^{5/} These functions do not promote Internet access or internal connections, for which state networks such as Washington DIS already can secure direct reimbursement.^{6/} Instead, these functions are typical administrative services that carriers routinely offer in conjunction with their transmission services. Washington DIS should not receive direct universal service support for its administrative or other costs. Nor is Washington DIS subject to unique administrative burdens.

Of course, there is no need for the Commission to even reach the foregoing issues. The Commission should deny the Washington petition on the basis of the Commission's recent declaratory ruling regarding the universal service treatment of the Iowa Communications Network (the "ICN Order").^{7/} USTA's February 26 letter describes in detail that because Washington DIS serves only Washington's state and local governmental agencies, such as public schools and libraries, Washington DIS, like ICN, is not a "telecommunications carrier" as defined in the Communications Act (the "Act"). Washington DIS therefore is not eligible for direct reimbursement for the provision

^{4/} *Id.* ¶ 84 (footnotes omitted).

^{5/} Indeed, the Washington petition should be dismissed in this regard as an untimely petition for reconsideration of the Commission's earlier determination that section 254(h)(2) permits schools and libraries to receive discounts specifically for Internet access and internal connections. *See Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776 (1997), *appeal pending in Texas Office of Public Utility Counsel v. FCC*, No. 97-60421 (5th Cir. 1997).

^{6/} *See Federal-State Joint Board on Universal Service*, 13 FCC Rcd 5318 (1997) ¶ 190.

^{7/} *See Federal-State Joint Board on Universal Services*, CC Docket No. 96-45, AAD/USB File No. 98-37, Declaratory Ruling, FCC 99-10 (rel. Feb. 18, 1999)

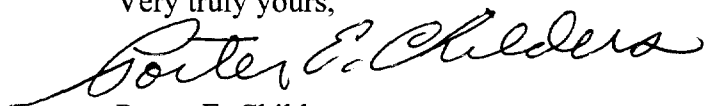
of discounted services to schools, libraries, and rural health care providers pursuant to section 254(h)(1) of the Act.

Section 254(h) of the Act contains no indication that the drafters of the 1996 Act contemplated any expansion of the role of state-owned networks unless they qualify as telecommunications carriers. As the ICN Order states, "Congress did not create the federal universal service support mechanisms for schools and libraries specifically in order to support or supplement these state networks."^{8/} A reversal of the Fourth Reconsideration Order would have the negative effect, without a basis in the Act, of providing incentives to state governments nationwide to create subsidized networks in competition with privately-owned carriers that are sources of those subsidies.

Accordingly, based on the precedents set in the Advanced Capability Report and the ICN Order, and the non-common carrier operations of the Washington network, the Washington petition should be denied.

Pursuant to section 1.1206 of the Commission's rules, two copies of this written *ex parte* presentation are being submitted to the office of the Secretary of the Commission today. Copies also are being sent to the individuals listed below. This filing is to be included in the public record of this proceeding. Please do not hesitate to call if any questions arise in connection with these matters.

Very truly yours,



Porter E. Childers
Executive Director
Legal & Regulatory Affairs

cc: Hon. William E. Kennard	Lawrence Strickling
Hon. Susan Ness	Lisa Zaina
Hon. Harold Furchtgott-Roth	Lisa Gelb
Hon. Michael K. Powell	Melissa Waksman
Hon. Gloria Tristani	Amy Nathan
Thomas Power	Irene Flannery
Linda Kinney	Jane Whang
Kyle D. Dixon	Valerie Yates
Kevin J. Martin	Christopher Wright
Paul Gallant	Suzanne Tetreault
Kathryn C. Brown	Debra Weiner

^{8/} See *id.* ¶ 27.